



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201227011

APR 12 2012

Uniform Issue List: 408.03-00

T: EP: RA: T2

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXX

IRA X = XXXXXXXXXX
 XXXXXXXXXX

Amount C = XXXXXXXXXX

Date 1 = XXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your request for a private letter ruling submitted on July 11, 2011, as supplemented by correspondence submitted on October 11, 2011, December 2, 2011 and February 21, 2012 in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 60, represents that he received a distribution from IRA X totaling Amount C on Date 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was because he forgot to deposit the check in a rollover account. Taxpayer A represents that he did not deposit the distribution check he received on Date 1 in any account.

Taxpayer A represents that in February of 2011 IRA X, which was an IRA CD, matured. Rather than renew IRA X, Taxpayer A took a distribution by check because interest rates were low. Taxpayer A represents that he intended to roll Amount C over into another IRA CD with better interest rates or a non-CD investment within the 60 day period. Taxpayer A represents that he inadvertently left the check among financial papers and overlooked rolling it over. On the date he requested the ruling, Taxpayer A

found the check among financial records and realized that he had not deposited it in a rollover IRA account.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount C from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408 (d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including:

(1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The Service has the authority to waive the 60 day requirement for a rollover to another IRA where the individual was prevented from completing a rollover in a timely manner because of circumstances described in section 408(d)(3)(I) of the Code or Rev. Proc. 2003-16. Here, Taxpayer A has indicated that he failed to timely accomplish a rollover because he inadvertently forgot to do so. Taxpayer A has neither presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over Amount C to an IRA nor has he provided any evidence of events beyond his reasonable control which would have prevented him from accomplishing a timely rollover.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount C from IRA X. Thus the contribution of Amount C to an IRA will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code, because the 60-day rollover requirement was not satisfied.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX by phone at (***) ***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose